

WATER QUALITY TEAM MEETING NOTES

**December 5, 2000
National Marine Fisheries Service Offices
Portland, Oregon**

Introductions and Review of the Agenda.

Mark Schneider of NMFS and Mary Lou Soscia of EPA, WQT co-chairs, welcomed everyone to the meeting, held December 5 at the National Marine Fisheries Service offices in Portland, Oregon. The meeting was facilitated by Donna Silverberg and Trish McCarty. The meeting agenda and a list of attendees are attached as Enclosures A and B. Please note that some of the enclosures referenced in these meeting notes may be too lengthy to routinely attach to the minutes; please contact Kathy Ceballos (503/230-5420) to obtain copies.

1. CWA/ESA Coordination Issues.

Soscia explained that today's meeting would be a little different from the typical WQT meeting, in that it is intended as a forum for free discussion of Clean Water Act/Endangered Species Act integration with the Total Maximum Daily Load (TMDL) development program. This group has been talking for some time now about how to deal with integration issues, Soscia said; as you know, the BiOp is scheduled to come out in mid-December, and there are some daunting tasks before the region in trying to address CWA issues in the context of recovering the listed species.

EPA believes that to do that, you have to address CWA issues, she said; they are biologically intrinsic to recovery. The question is how that happens, said Soscia; as most of you are aware, currently, the NMFS Regional Forum process is heavily focused on dissolved gas. About four years ago, EPA made it clear that water temperature is also intrinsic to recovery, fish health and overall ecosystem health. An ad hoc group was formed to deal with water temperature, Soscia said; EPA also hosted two water temperature workshops. The old Dissolved Gas Team then merged with the ad hoc water temperature group to become the WQT, which was intended to function as a technical advisory group to NMFS on water quality issues.

The 2000 FCRPS Biological Opinion identifies some changes to the role of the Water Quality Team, Soscia continued. The WQT is now expected to evolve into more of a decision-making body,

along the lines of the IT and the SCT, and we need to do some brainstorming about how that might happen, because we're now moving into the implementation phase. We would like your ideas about how to move forward today, said Soscia; our hope is that we can continue this dialogue over the next couple of months.

Schneider thanked everyone for their time and participation today; he suggested that the group look first at the BiOp's Appendix B, which describes the water quality plan, the focal point of much of the WQT's future effort. We will continue to undertake technical assignments, he said, but our overall effort will be much broader than that.

Bob Heinith noted that, in its comments on the new BiOp, the tribes have raised some specific questions about the structure and authorities of the various Regional Forum groups, including the WQT; he asked whether NMFS would be addressing those comments today. Jim Ruff replied that NMFS has scheduled a meeting for this Thursday at CBFWA to address NMFS' response to comments; he added that NMFS is preparing a response to comment's document which will answer many of the outstanding questions about the Biological opinion.

Dick Cassidy provided the Corps' opinion about the evolution of the WQT into a broader entity. The Corps is not in favor of expanding the WQT's focus into policy issues, he said. We would be glad to participate in a non-Regional Forum group that discusses water quality issues from a broader regional perspective; however, because the WQT was formed to address BiOp/ESA issues, the Corps feels it would be more appropriate for another forum, outside the NMFS Regional Forum, to play that broader, policy-level regional role in the water quality arena, Cassidy said.

Amazingly enough, the Nez Perce Tribe is actually in agreement with the Corps on this issue, Rick Eichstadt said. We're dealing with Columbia River water quality issues on a number of levels, he said; certainly the WQT can provide input to the various regional processes, but we don't think it would be appropriate to try to integrate all of those processes under the WQT umbrella. John Piccininni noted that the Regional Watershed Coordination Team is another entity which is attempting to address a broad array of water quality issues in the basin; if the WQT's focus is going to be on mainstem issues, full coordination with that group may or may not be necessary.

Soscia noted that the states bear heavy responsibility for water quality, through both legal settlements and their 303 (d) lists. We all need to work together on the mainstem, she said, but EPA's feeling is that the tributary programs are being addressed through state processes. From EPA's perspective, the mainstem should be the WQT's main focus. Isn't TMDL development the process through which the mainstem issues will be addressed? Eichstadt asked. That is one avenue, but we're also interested in something a little more interactive, Soscia replied.

Cliff Sears said Grant PUD's concern is that there seem to be a lot of different bodies which have a piece of the water quality pie; we would be interested in eliminating all possible redundancy

between the WQT, TMT, SCT and other groups, he said.

Soscia then spent a few minutes going through the relevant portions of the July draft of the 2000 FCRPS Biological Opinion; she distributed copies of Appendix D from the July BiOp draft, covering the development of a water quality plan (Enclosure C). She noted that the final version of this appendix has undergone some changes; in general, what we've tried to do in this appendix is sketch out a strategy for moving forward, she said. The plan lays out a possible scope and structure, a potential method for connecting with the TMDL work, and, in general, a path forward. One issue that needs to be addressed is the 110% TDG standard vs. various fish passage survival issues, Soscia said; we also acknowledge that, while water temperature is crucial, from the standpoint of ecosystem health, it is a very difficult issue to address.

Soscia noted that the appendix lays out an "A" list of water quality projects, on which there is general agreement; these are mostly dissolved gas projects. It also lays out a "B" list of more contentious projects, mainly studies, she said. The appendix then talks about how the Water Quality Team might be reconstituted to address some of these issues, Soscia said; that's what we're here to talk about today. We need a forum that will allow us to move forward on these issues, Soscia said; part of the challenge is figuring out how to address this very substantial workload in the most efficient way possible. In my view, she said, we have a clear mandate to deal with these issues within some of the existing forums.

Heinith asked about Page D-8 of the appendix, in particular, the dissolved gas goal. I don't see an end-point, a date when you're meeting the goal, he said – if you don't have a date, it is difficult to lay out a program that gets you there. We've talked about various dates, Soscia replied; the shelf-life of this BiOp is five years, and there is general agreement that we're not going to be able to reach that goal in five years. Basically, we don't have the ability to set a date at this time; all I can tell you is that water quality issues are going to be an important component of the various check-in points included in the BiOp process, Soscia said.

Joyce Cohen observed that this group is the wrong one to be setting water quality milestones – I would hate to see the NMFS Regional Forum be the place where CWA milestones are set, she said. This group can handle the implementation side, she said, but the states will enforce those milestones.

Cathy Tortorici provided some background on the proposed organizational structure for this effort. Basically, some feel that, with a little modification, the Regional Forum could be the forum called for in the BiOp; another group of people feel the NMFS Forum is not the appropriate place to address these issues. We've talked about the possibility of setting up a team that is integrated with, but separate from, the Regional Forum process, Tortorici said; the problem is that people are "forumed out," and highly resistant to the idea of setting up another completely separate process. Cohen suggested that it may make sense to table this integration discussion until the mainstem TMDL is completed in December 2001. While I understand that NMFS has obligations under the ESA, she

said, until then, there is really nothing to integrate. All I'm saying is that it is probably unrealistic to expect the Regional Forum to set CWA milestones – that's my basic premise, she said.

Tortorici directed the group's attention to Page D-25 of Enclosure C, which lays out the strawman proposal for the Water Quality Improvement Team. Eichstadt asked about the differences between the WQT and TMDL processes, as well as the commitments each agency has made to each process. Soscia distributed Enclosures D and E, fact sheets on TMDLs in general and on the Columbia and Snake River Mainstem TMDL process, respectively; she went briefly through their contents.

Obviously this is a major work effort, said Soscia; we're committed to moving forward in a cooperative and coordinated way to develop a sound technical basis for our future water quality decision-making.

Chris Maynard noted that, to date, the WQT has been primarily an information-sharing group; if it is to be a fully-integrated part of the TMDL development process, it is going to have to evolve into more of a working body, he said. It will be very important to encourage more participation from both industrial users and the tribes if the WQT is to make that transition successfully, he said. Human resources are a limiting factor, he said; unless these changes can be made, we will likely focus our available resources on the TMDL development process, rather than on this group.

So once the TMDL is on the table, what then would become the function of this group? Dave Zimmer asked. Our feeling is that we need a systemwide approach, given the huge expense of some of the measures that may be necessary, Soscia replied – we need a forum to coordinate that systemwide approach. Bringing people together helps ideas flow, she said; my vision is that this is an opportunity to create a truly collaborative systemwide way to solve water quality problems. That's the whole basis of the Transboundary Gas Group, Jim Ruff observed; the thing I would like to point out is that the BiOp calls for the development of one- and five-year water quality plans for the mainstem. Our thought is that those plans might be coordinated through this group.

Wouldn't that be redundant? Cohen asked. The one- and five-year plans would lay out a strategy for the implementation of the measures called for in the BiOp, Ruff replied. So you're setting yourselves up in opposition to the scientific basis of the TMDL process? Cohen asked. That is not our intention, Ruff replied.

The group discussed the potential for conflict between a separate TMDL development process and a BiOp-mandated water quality improvement program; various NMFS representatives observed that it is not NMFS' intent to set up separate tracks on this issue. Tortorici said it is NMFS' intention to work with the states to achieve the fullest possible integration between the measures called for in the BiOp and the measures that will be called for in the mainstem TMDL. We wanted the two to be the same, said Schneider – they're on parallel tracks, but we want them to be complementary, rather than conflicting.

Jim Bellatty observed that, on the subbasin level, these two parallel processes do indeed come together. The concern is that, if you don't have a model watershed group in your subbasin, you lack the framework for making that coordination happen. Basically it's got to be a bottom-up process, he said.

Eichstad reiterated his concern about the lack of coordination and integration between the TMDL process and the BiOp water quality plan; Silverberg observed that that is what we're here to talk about today. The hope is to lay out a nexus for integration between these parallel tracks, she said. And our feeling is that now is an appropriate time to lay out a collaborative avenue for making water quality decisions, Soscia said.

Given the concerns I identified previously, said Eichstadt, perhaps one way to integrate this is for the BiOp water quality plan to become an implementation plan for the TMDL – will need the people here, after all, to sit down at the table and figure out how these measures can be implemented. That sounds good to me, said Maynard – you would have some other group developing the technical allocation, and the BiOp plan would then lay out how those TMDLs can be achieved. In a sense, then, this group could function as a sort of citizen's advisory group, Eichstadt observed.

Cassidy reiterated that the Corps would be willing to participate in the kind of implementation team we're talking about today only if it was outside the umbrella of the NMFS Regional Forum. From the Corps perspective, he said, the purpose of the Biological Opinion is to avoid jeopardy, and such a group would address issues outside the question of avoiding jeopardy. What I'm sensing is a difference of opinion about what constitutes avoiding jeopardy and what constitutes recovery, he said. What about participating in an allocation forum? Maynard asked. Yes, the Corps would participate -- again, as long as it was outside the NMFS Forum, Cassidy replied.

Soscia observed that there is considerable overlap between the ESA/Regional Forum process and the CWA/TMDL process; despite the fact that there are shortcomings to the Regional Forum process, from an efficiency standpoint, it probably makes sense to use existing processes to the greatest extent possible. I don't think we have agreement about the discrepancies between recovery and avoiding jeopardy, she said; those are issues that will need to be resolved over time. However, there are enough common elements between the Regional Forum issues and the TMDL issues that it doesn't make much sense to set up a completely separate forum, she said. Eichstadt replied that, since the tribes don't participate in the Regional Forum, there would be no duplication of effort, from his perspective, and he would be in favor of creating a separate process.

Who, then, would convene such a forum for the integration between the TMDL and Regional Forum water quality processes? Silverberg asked. Bellatty observed that whatever approach is chosen, it has to be flexible enough to take into account the considerable local variability within the states' model watershed programs.

Perhaps we could brainstorm about what kinds of things might be addressed by a group that overlaps between the TMDL and Regional Forum processes, Soscia suggested. What if EPA were to convene this team to connect the TMDL development program and the Biological Opinion? she asked – that could be a reconstitution of this group. Sears said he liked this idea, as did Maynard. I like the idea of evolving this group toward a water quality forum that fish agencies can participate in, Maynard noted. I definitely don't want to see two water quality groups, Sears added.

The question is how to address the fact that we have two separate groups with two separate legal authorities and responsibilities – how do we integrate the two? Eichstadt said. Perhaps some sort of a schematic, laying out the various authorities and responsibilities, would be helpful, Piccininni suggested. We might also be able to identify certain checkpoints at which that integration needs to occur, Eichstadt said, while leaving the TMDL and ESA processes separate. Cohen said she agreed with that idea. That way, said Eichstadt, any interested party could participate in either process, and they would essentially have two shots at getting their issues addressed.

I guess I'm still confused about where such a body would be, said Cassidy. If it's under the NMFS umbrella, again, the Corps would not be able to participate. What about the idea that EPA would convene that forum? Silverberg asked – any objections? None were expressed at this time.

The WQT discussed whether such a forum would replace or supplement the existing WQT group; Schneider replied that the need to address ESA-related water quality issues still exists. The group discussed the historic role of the WQT, then returned to the concept of an EPA-convened water quality group to facilitate integration between TMDL/CWA and ESA water quality issues. Silverberg jotted down the following ideas with respect to the function of this group:

- Discuss and integrate water quality issues – TMDLs and ESA
- Clear definition/acknowledgment of each entity's authority – each maintains authority
- Goal: discuss and decide issues together whenever possible – get advice for action
- Sub-groups to discuss fish/ESA issues (technical) with links to NMFS Regional Forum or other appropriate forums
- Sub-groups meet in places appropriate to the issues in the TMDLs.

Silverberg noted that this list is not intended to reflect that agreement has been reached; it is simply an attempt to create a starting-point for further discussion. So under this model, the WQT would retain its current information-sharing function? Tortorici asked. Actually, I believe the WQT would evolve into this new group, Silverberg replied.

So you're talking about an information-sharing group with technical subgroups, which would be working on TMDLs and other issues? Maynard asked. In other words, there would be an umbrella team where information generated by the subgroups would be shared? That may make sense,

Silverberg agreed. My question is, when conflicts occur between the ESA and the Clean Water Act, or between the existing authorities among the group's participating entities, how would you decide which trumps? Ruth Abney asked. There was general agreement that this is a crucial question. It would likely be the courts that decide, Bruce Sutherland observed.

How do we want to proceed at this point? Silverberg asked. Have we had enough conversation to take this issue and think about it, prior to discussing it further at the next WQT meeting? I'm not clear where further discussion of the BiOp water quality plan will take place, Tortorici said. That's something we still need to address, Silverberg replied.

Silverberg put up a number of general concepts regarding a reconstituted Water Quality Team.

The Water Quality Team *could* be:

- Implementation of the Water Quality Plan in BiOp and TMDL plans
- Shared information re TMDL process – until TMDLs are done. Then, work to integrate TMDL and federal efforts
- Working group including all affected stakeholders – states, federal parties, tribes, utilities, industry
- Work toward water quality improvement
- Forum to address systemwide issues and innovations
- Now: parallel tracks of state TMDL and federal actions – need to plan for appropriate nexus/integration
- Sub-groups to develop allocations; WQT work to integrate those allocations – advisory to water quality agencies
- Integration for recovery as a common goal
- Model watershed projects as a model or a place where work can be done on some issues – the WQT would need buy-in at the sub-basin level to be effective
- EPA convene the WQT as a water quality forum that fish agencies participate in

Let's get the notes out to people, then, perhaps, convene a subgroup, using the notes, to lay out a couple of different models in more detail, Soscia said. The WQT could then reconvene in January as a group to discuss these possible futures. There was no disagreement to Soscia's suggestion.

2. Next WQT Meeting Date.

The next meeting of the Water Quality Team was set for 1 p.m. on Tuesday, January 16. Meeting notes prepared by Jeff Kuechle, BPA contractor.